THE CONSTITUTION (NINETY-FIFTH AMENDMENT) BILL, 2003

AND

THE CONSTITUTION (NINETY-SIXTH AMENDMENT) BILL, 2003

THE MINISTER OF FINANCE AND COMPANY AFFAIRS (SHRI JASWANT SINGH): Mr. Chairman, Sir, I move:

> "That the Bill further to amend the Constitution of India as passed by Lok Sabha be taken into consideration."

This Constitution (Ninety-Fifth Amendment) Bill, 2003, seeks to provide for tax on services as a separate entry for taxation and for related Central legislation to govern various modalities in that respect.

Sir, in most developed countries, goods and services are traded and taxed together. Taxation of services in India was started through the Union Budget, 1994-95, when it was levied, with effect from July 1, 1994, on stockbrokers, general insurance and telephone services; if I am not mistaken, the hon. Leader of the Opposition was the author of this initiative then. The power to levy tax on services is, however, not specifically mentioned either in the Union List or the State List in the Seventh Schedule of Constitution; Entry 97 of the Union List, which gives power to the Centre for levy and collection of "any tax not mentioned in either of List II and List III". At present, therefore, Parliament has the power to levy and collect tax on services only as a residual taxation matter. In exercise of this power, the Central Government has periodically taxed selected services.

Sir, the role of this sector in the economy being significant - with the service sector accounting for 48-plus per cent of the GDP - and on the basis of deliberations between the State Governments and the Central Government, also in accordance with the views of the recommendations of Expert Committees, it has been proposed to suitably amend the Constitution: (i) to introduce a new entry (Entry No. 92C- Taxes on services) in the Union List (List I) of the Seventh Schedule of the Constitution; (ii) to insert a new article 268A in the Constitution to provide for levy of tax on services by the Union and collection and appropriation of the proceeds thereof by the Union and the States in accordance with principles to be laid down by a new law to be enacted by Parliament; (iii) after the proposed

amendments to the Constitution are effected, to enact a suitable Central legislation to provide for all necessary modalities, including levy of the tax on services by the Union Government and collection and appropriation of the proceeds of this tax, up to the prescribed *ad valorem* limits, by the Union and the States, respectively.

After this proposed amendment to the Constitution is considered and passed by Parliament and ratified by the State Legislatures, suitable Central legislation will be enacted to provide for all necessary modalities, including collection and appropriation of the proceeds of taxes on services by the Union and the States, respectively.

Sir, this proposed amendment will facilitate reforms in the Domestic Trade System and, most importantly, it will widen the tax base of the States, as and when this Bill, this taxation measure, begins to be effectively implemented.

Sir, I must also add here that this is only an enabling provision that through the Constitution, we have the levying and collecting of service tax by the Centre and the States. This would, significantly, increase the revenue receipt collection of the States. And, it is only after this Constitution Amendment is adopted, we will be bringing forth a Bill as early as possible. We would have brought it in this Session itself, but for the delay that has taken place. And we will have a legislation on service tax proper, in which we will consider fully whether the tax is to be shared or the services are to be shared, and it will be entirely possible because it is not practical for the Centre to tax all the services; and there are some services for which it will be more practical to leave them entirely in the care of the States. Now, these are the details, which will be taken up when this Bill proper for services tax comes up. This is only an enabling provision. I thought I should emphasise this.

The question was proposed.

DR. MANMOHAN SINGH (Assam): Sir, I rise to support this Bill. The fiscal system of our country is under great strain. In fact, the fiscal deficit of the Centre and the States, which now exceeds nearly 11 per cent of our Gross Domestic Product, is among the highest in the developing countries. Efforts have been made from time to time to tackle the fiscal malaise particularly the control of expenditure. Promises have been made, but, unfortunately, in particular, with regard to expenditure control, the last five years have seen retrogression, not progression. In the same way, in the

last decade, a good deal of attention has been paid to reforming the tax system of our country. But the sad reality is that the tax:GDP ratio in our country today is 2:2.5 per cent of the GDP lower than what it was some 10-12 years ago. Therefore, we have to ponder over the consequences of the way the fiscal system of India is being managed. Emphasis has to be laid both on expenditure control and tax reform, with a tighter tax administration. These are the obvious routes to bring the fiscal system of our country into a proper shape.

It was in this context that when I was the Finance Minister, we began the practice of taxing the services that the hon. Minister hao mentioned. It was in the Budget of 1994-95 that, for the first time, services were brought within the purview of the Union taxation. There is no explicit Entry in Schedule VII, either in the Union List or in the State List, which mentions the taxation of services. Therefore, at that time, we took advantage of Entry 97 of the Union List, which enables the Union Government to tax items, which are not mentioned otherwise in either the Union List or the State List. This is, obviously, not a very satisfactory arrangement and, therefore, the decision of the Government to get the Constitution amended to make an explicit provision for the taxation of services, and giving the Union the right to legislate about the basic principle on which this taxation should be based, is a sound one.

[THE DEPUTY CHAIRMAN in the Chair.]

Also, the provision in the Constitutional amendment that the collection and appropriation will be the responsibility of both the Government of India and the States, in a manner to be prescribed by Parliament by law, I think, is also a sound provision.

Madam, there are, however, two or three things that I would like to mention. India has prematurely graduated to the status of a service economy. In the history of the developing countries, or, in the history of the developed countries, the stage when a country reaches a position where 50 per cent of its GDP accounted for services, comes normally much after industrialisation has progressed. Unfortunately, in our country, the pace of industrial growth has not been very rapid, and we have prematurely graduated to a service economy; the services today account for nearly 50 per cent of our GDP. The reasons for this are numerous. I do not wish to go into those reasons. But given the weight of services in our national economy, it is entirely appropriate that services ought to be brought

explicitly into the tax net. Madam, however, it is necessary also to learn from our experience with regard to the introduction of State-level VAT. The hon. Minister has mentioned that after the passage of this Constitution (Amendment) Bill, its ratification by the States, he will come to this House and to Parliament with a fresh legislation which will lay down the broad principles on which services ought to be taxed in our country. I would respectfully submit to him that adequate preparation should be made for this purpose. The Bill, when it is ready, should be made available for discussion by the public. Those who are affected by the provisions of this Bill, they should be consulted; and we should evolve a broad national consensus which would integrate the services taxation into the broad framework of system of Indirect Taxes, both into the Central framework of CENVAT as well as the State-level Value-Added Taxes. This is one submission I would make to the hon. Minister that before we rush through legislation, there must be adequate and proper consultations with representatives of industry and trade and with the representatives of various professional organisations so that the type of difficulties that have arisen while implementing the State-level VAT do not, plague us when it comes to having an explicit arrangement for taxation of services. Thank you, Madam.

SHRI JASWANT SINGH: Madam, this is unusual for me to do it, but I do seek liberty to clarify it. On this final point, I will be replying in great detail, but I want to affirm straightaway that this is an eminently sound suggestion that, after this Constitution Amendment, the legislation proper relating to the service tax, be circulated for larger public opinion, of course, we will, certainly, do it. We will consult the Leader of the Opposition, and we will circulate it to as large a community of the concerned, as possible. Certainly, we will do so.

ANNOUNCEMENT BY CHAIR

THE DEPUTY CHAIRMAN: We have given one hour for this legislation, and we don't have many speakers on this. We will have to decide about the voting process.

श्री रमा शंकर कौशिक (उत्तर प्रदेश) : वह तो चार बजे है।

THE DEPUTY CHAIRMAN: No; but, I think we will finish it earlier than that. If we finish it earlier than that...

SHRI N. JOTHI (Tamil Nadu) : Madam, we are opposing the Bill for some valid reasons.